

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Water banking.

Sponsored by: Joint Agriculture, State and Public Lands &  
Water Resources Interim Committee

A BILL

for

1 AN ACT relating to water; establishing a Wyoming water banking  
2 program as specified; declaring water banking to be a  
3 beneficial use of water; providing rulemaking authority;  
4 amending related provisions; and providing for an effective  
5 date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 41-3-1101 and 41-3-1102 are created to  
10 read:

11

12

ARTICLE 11

1

2

## WATER BANKING

3

4

\*\*\*\*\*

5

\*\*\*\*\*

6

## STAFF COMMENT

7

8 Other states have provided legislative findings related to  
9 water banking. It may be appropriate to begin the article  
10 with a section providing legislative findings related to  
11 water banking and the beneficial use of water.

12

13

\*\*\*\*\*

14

\*\*\*\*\*

15

16

## 41-3-1101. Water banking.

17

18

19

20

(a) All water deposited into the water banking program  
under this article shall be held in the name of the state of  
Wyoming.

21

22

23

24

25

26

27

28

(b) Water banking in Wyoming as provided in this  
article shall be a beneficial use of water. Water may be  
banked for any beneficial use including use for endangered  
species mitigation, drought contingency planning and use for  
water compact security to help ensure that the state can  
supply water required under water compacts or agreements or  
as otherwise required by law.

1

2 \*\*\*\*\*

3 \*\*\*\*\*

4 STAFF COMMENT

5

6 It would be advisable to develop definitions for "drought  
7 contingency planning" and "water compact security".

8

9 \*\*\*\*\*

10 \*\*\*\*\*

11

12 (c) The Wyoming water development commission shall  
13 administer a water banking program as provided in this  
14 article. The commission shall adopt rules necessary for the  
15 water banking program.

16

17 (d) In administering the water banking program under  
18 this section the commission shall:

19

20 (i) Provide a process for a person with a valid  
21 water right, including contract rights, to direct some or all  
22 of that right to the water bank as provided in W.S. 41-3-1102;

23

24 (ii) Provide a process for water users to agree  
25 with the commission for a temporary beneficial use of banked  
26 water and determine the terms of a water use agreement that  
27 provides for the use of banked water. Agreements for the use

1 of banked water under this section may provide for storage of  
2 water for endangered species mitigation, drought contingency  
3 planning and water compact security as determined by the  
4 commission;

5  
6 (iii) In consultation with the state engineer,  
7 determine when and how to accept banked water, where to store  
8 banked water and the amount of banked water that is available  
9 for water users;

10  
11 (iv) Facilitate transfers of water between water  
12 right holders and water users through the water banking  
13 program.

14  
15 (d) Water banking shall be a temporary water transfer  
16 and no person shall acquire any new or enlarged permanent  
17 water right through the use of the water banking program.

18  
19 **41-3-1102. Water bank deposits.**

20  
21 (a) Any person with a valid water right in Wyoming may  
22 agree with the water development commission to deposit some

1 or all of that water into the water banking program as  
2 provided by W.S. 41-3-1101.

3

4 (b) No deposit shall be made under this section until  
5 the state engineer determines that the deposit will not cause  
6 injury to Wyoming water users. The state engineer may impose  
7 conditions on the deposit of water as necessary to prevent  
8 potential injury to other water users. The state engineer  
9 shall make a determination of historic use for the purpose of  
10 determining the amount of water that is applicable to a  
11 deposit and the historical return flows that shall be  
12 maintained. The state engineer may adopt rules necessary for  
13 the administration of this subsection.

14

15 (c) No deposit of water into the water banking program  
16 under this section shall exceed ten (10) years.

17

18 (d) If a person validly deposits water in the water  
19 banking program under this section, the portion of the water  
20 right that is deposited shall not be subject to any claim for  
21 abandonment or any reduction in the historical consumptive  
22 use calculation or other value of the deposited water right.

23

1       **Section 2.** W.S. 41-2-116(a), 41-3-101, 41-3-103 and  
2 41-3-401(a) are amended to read:

3

4       **41-2-116. Water rights.**

5

6       (a) The director of the Wyoming water development  
7 office shall, at the direction of the governor, file  
8 applications in the name of the state of Wyoming for permits  
9 to appropriate water, to construct dams and other works, as  
10 required for the water banking program including for storage  
11 of banked water as provided in W.S. 41-3-1101, and to take  
12 the steps necessary to acquire, maintain or preserve the  
13 priority of any right essential to any project which is or  
14 may become a project of the Wyoming water development program,  
15 except that nothing in this subsection shall be construed to  
16 authorize or empower the director of the Wyoming water  
17 development office to acquire water rights through the power  
18 of eminent domain.

19

20       **41-3-101. Nature of water rights and beneficial use.**

21

22 A water right is a right to use the water of the state, when  
23 such use has been acquired by the beneficial application of

1 water under the laws of the state relating thereto, and in  
2 conformity with the rules and regulations dependent thereon.  
3 Beneficial use shall be the basis, the measure and limit of  
4 the right to use water at all times, not exceeding the  
5 statutory limit except as provided by W.S. 41-4-317. In  
6 addition to any beneficial use specified by law or rule and  
7 regulation promulgated pursuant thereto, the use of water for  
8 the water banking program as provided in W.S. 41-3-1101 and  
9 41-3-1102 or for the purpose of extracting heat therefrom is  
10 considered a beneficial use subject to prior rights. Water  
11 being always the property of the state, rights to its use  
12 shall attach to the land for irrigation, or to such other  
13 purposes or object for which acquired in accordance with the  
14 beneficial use made for which the right receives public  
15 recognition, under the law and the administration provided  
16 thereby. Water rights for the direct use of the natural  
17 unstored flow of any stream cannot be detached from the lands,  
18 place or purpose for which they are acquired, except as  
19 provided in W.S. 41-3-102 and 41-3-103, pertaining to a change  
20 to preferred use, and except as provided in W.S. 41-4-514.

21

22 **41-3-103. Preferred uses; procedure for change of use.**

23

1 Where it can be shown to the board of control under the  
2 provisions hereof, that a preferred use is to be made, the  
3 procedure for a change of such use shall embrace a public  
4 notice, an inspection and hearing if necessary by and before  
5 the proper division superintendent, a report of such  
6 superintendent to the board of control, and an order by said  
7 board. If the change of use is approved, just compensation  
8 shall be paid and under the direction of the board, proper  
9 instruments shall be drawn and recorded. The procedure for a  
10 change of use shall not apply to any water right that is used  
11 for deposit of water in the water banking program as provided  
12 in W.S. 41-3-1102.

13  
14 **41-3-401. Failure to use water; extension of time;**  
15 **initiation by benefitted or injured user; hearing; appeal.**

16  
17 (a) Where the holder of an appropriation of water from  
18 a surface, underground or reservoir water source fails,  
19 either intentionally or unintentionally, to use the water  
20 therefrom for the beneficial purposes for which it was  
21 appropriated, whether under an adjudicated or unadjudicated  
22 right, during any five (5) successive years, he is considered  
23 as having abandoned the water right and shall forfeit all



1 water rights and privileges appurtenant thereto. This section  
2 shall not apply to any water right that is used for deposit  
3 of water in the water banking program as provided in W.S.  
4 41-3-1102. Notwithstanding any provision in this section to  
5 the contrary, the holder of an appropriation for the diversion  
6 and storage of water in a reservoir, from which water or a  
7 portion thereof has not yet been beneficially used for the  
8 purposes for which appropriated, may apply to the board of  
9 control for an extension of time not to exceed five (5) years,  
10 within which to use water therefrom for the beneficial  
11 purposes for which it was appropriated. In the application  
12 the holder shall demonstrate the exercise of due diligence  
13 toward the utilization of the appropriation, and that  
14 notwithstanding the exercise of due diligence, reasonable  
15 cause exists for nonuse. Reasonable cause includes but is not  
16 limited to delay due to court or administrative proceedings,  
17 time required in planning, developing, financing and  
18 constructing projects for the application of stored water to  
19 beneficial use which require in excess of five (5) years to  
20 complete, delay due to requirement of state and federal  
21 statutes and rules and regulations thereunder and any other  
22 causes beyond the control of the holder of the appropriation.  
23 Upon receipt of an application for extension, the board of

1 control shall proceed under the provisions of W.S. 16-3-101  
2 through 16-3-115 and may grant an extension of time as it  
3 finds proper, not to exceed five (5) years, for the  
4 application of the appropriated water to the beneficial use  
5 for which it was appropriated. A prior grant of extension of  
6 time hereunder does not preclude the holder from applying for  
7 additional extensions of time, each not to exceed five (5)  
8 years, upon similar application and showing. The granting of  
9 an extension of time precludes the commencement of an  
10 abandonment action against the appropriation during the  
11 period of extension.

12

13 **Section 3.** This act is effective July 1, 2019.

14

15 \*\*\*\*\*

16 \*\*\*\*\*

17 **STAFF COMMENT**

18 A delayed effective date may be advisable to provide time for  
19 the Commission and the State Engineer to adopt rules for the  
20 administration of the water banking program.

21

22 \*\*\*\*\*

23 \*\*\*\*\*

24

25 (END)